IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 2984 of 2005

Date of Decision: 15.12.2006

H.R.Soni ...Petitioner

Vs.

Maharishi Dayanand University, Rohtak ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Sandeep Kotla, Advocate,
for the petitioner.

Mr.Pankaj Sharma, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the orders passed by the learned Courts below rejecting an application moved by the petitioner under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (for short the Code) .

By way of interim injunction application the petitioner herein has sought an order restraining the respondent from recovering the amount of Rs.54,023.90P in view of the letter No.EN-3/02/M-3/53 dated 2.1.2003 till the decision of the suit. The primary ground taken by the petitioner in

support of his application was that before issuing the letter of recovery no notice was issued to the petitioner herein and even otherwise it was a non-speaking order. The petitioner had submitted reply to the said letter and thereafter the order recovering the amount in question was passed.

Learned both the courts below rejected the application primarily on the ground that the legality of order passed by the competent authority and submissions made by the petitioner against the said order would only be considered after the parties are permitted to lead evidence, and therefore, at present the petitioner did not have a prima facie case nor the balance of convenience is in his favour. It was also held that no irreparable loss or injury would be caused to the petitioner in case the injunction was not granted. In appeal the learned Additional District Judge affirmed the order passed by the learned Trial Court.

Learned counsel for the petitioner contended that some of the similarly situated persons against whom similar show cause notice was issued and thereafter an order was passed had come to this Court to challenge this order by filing a writ petition in which following order was passed:-

> " The petitioner has impugned the order dated January 2,2003(Annexure P/11) whereby the recovery of Rs.54,023/- has been ordered from him. A further prayer has been made by the petitioner that the respondents be directed to refund the amount already recovered from him in pursuance of the aforesaid order Annexure P/11.
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> Although various grounds of challenge have been

made by the petitioner to the aforesaid order Annexure P/11 but primary, at this stage, we find that the order Annexure P/11 is a non-speaking order. In fact, a show notice had been issued to the petitioner for ordering the recovery of the excess payment. The petitioner had submitted a detailed reply dated January 22, 2002 to the said show cause notice. The University has, thereafter, passed the order Annexure P/11 ordering the recovery in question. From the perusal of the order Annexure P/11 we find that the reply of the petitioner has not been taken into consideration. No reasons have been ascribed as to why the aforesaid amount was liable to be recovered from him.

In these circumstances without going into the merits of the controversy at all, at this stage,we deem it appropriate to quash the order Annexure P/11 and direct respondent-University to consider the reply filed by the petitioner to the show cause notice dated March 13, 2001 and, thereafter, pass a speaking order, by affording the petitioner an opportunity of hearing in the matter. In case fresh order adversely affects the interest of the petitioner, he would be at liberty to challenge the aforesaid order, by taking up all pleas which are available to him in accordance with law.

The writ petition stands disposed of."

The contention of the learned counsel for the petitioner is that in view of the decision of this Court the petitioner has a prima facie case

and the impugned order cannot be sustained as the order challenged in civil suit is prima facie bad in law as the same is not speaking order and is in violation of the principles of natural justice.

In view of above and the order passed by this Court in CWP No.6624 of 2005, this revision petition is allowed. The impugned order is set aside and the application moved by the petitioner under Order 39 Rules 1 and 2 of the Code is allowed.

However, nothing stated herein should be taken as an expression of opinion on the merits of the case.

(Vinod K.Sharma)
Judge

15.12.2006
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